City of Lafayette Staff Report

For:	City Council
By:	Gonzalo L. Silva, Financial Services Manager
Date Written:	August 3, 2009
Meeting Date:	August 10, 2009
Subject:	Increase Budget for fund 32(Parking Fund) for FY 08/09 by $ 26,500

Background: On August 31, 1978 the City entered into a lease agreement with Pacific Bell for the parking lot located at 3610 Happy Valley Road for the amount of $ 3,196.00 per year and in addition the City would pay the prorated property taxes according to the square footage of the land leased by the City.

Pacific Bell billed the City sporadically for the yearly rent and for related property taxes and no bills were received from 1994 to 2008 for the lease and no property tax bill was received from 2000 until 2009. The lease agreement will terminate effective June 30, 2009.

The City accrued the expense for the rent for those years and estimated the property taxes due however, the amounts accrued were not sufficient to cover all the costs. The finance department tried unsuccessfully a number of times to contact the lease administrator to obtain a more accurate amount to accrue for those the years.

At the time of the lease termination ATT billed the City for past rent and past property taxes for the amount of $ 87,291.35. The amount already accrued from previous years was $60,800.00.

Recommendation

Increase the budget for fund 32 by the amount of $ 26,500 and authorize the City Manager to sign the lease termination.

10 H

AT&T Corporate Real Estate
2600 Camino Ramon
Room 3E401
San Ramon, CA 94583

July 27, 2009

City of Lafayette
3675 Mt. Diablo Blvd, #210
Lafayette, CA 94549
Attn: Steven Falk, City Manager

RE: Termination of Lease

Dear Mr. Falk:

Pursuant to the lease being by and between Pacific Bell Telephone Company, a California corporation, formerly being known as Pacific Telephone and Telegraph Company ("Lessor") and the City of Lafayette, a municipal corporation ("Lessee"), and being dated August 31, 1978 ("Lease"), this correspondence shall serve as notice to Lessee of Lessor's decision to effectuate the termination of the Lease as of June 30, 2009 ("Termination Date"), such right to terminate being provided for in Paragraph 3(c) of the Lease. The original expiration date of the Lease was June 30, 1993, but in accordance with Paragraph 3(c) of the Lease which provides the following, the Lease shall be terminated effective as of the Termination Date :

> "Unless Lessor gives Lessee thirty (30) days' prior written notice to the contrary, Lessee may continue to occupy the leased premises after the expiration of the term at the same rental rate and upon the same terms and conditions as are contained in this lease. Such tenancy may be terminated by either party hereto at any time upon thirty (30) days' written notice to the other"

Accordingly, Lessee shall peaceably surrender the leased premises to Lessor in good order and condition on or before the Termination Date, performing any and all repair and restoration obligations required of the Lessee as per the terms of the Lease.

In addition, Lessee shall pay to the Lessor, the amount of $87,291.35 on or before the Termination Date, such amount representing outstanding and past due accrued rent, taxes and other charges payable by Lessee under the terms of the Lease, for the Lease period of July 1, 1978 thru June 30, 2009.

Please acknowledge your receipt of this correspondence and acceptance of these terms by signing and dating below. Please feel free to direct any questions you may have with respect to this termination notice to Joy Grant, Senior Lease Manager at (925) 824-3068 or via email at jg4279@att.com. A self-addressed envelop is enclosed for your convenience.

Sincerely,

Robert A. Damaschino
Director, Asset Management

Agreed and accepted:
City of Lafayette, a municipal corporation
By:_____
Name:_____
Title:_____
Date: _____

REAL ESTATE: 3610 Happy Valley Road, Lafayette - W1-041

REAL ESTATE FILE COPY

San Jose, April 11, 1978

ATTORNEY	- For approval as to form
DIVISION MANAGER, REAL ESTATE SERVICES, NORTHERN CALIFORNIA	- For recommendation
VICE PRESIDENT - NETWORK AND SPECIAL SERVICES	- For concurrence
VICE PRESIDENT - SUPPORT SERVICES - CALIFORNIA	- For recommendation
VICE PRESIDENT - OPERATIONS	- For execution
DISTRICT ENGINEER - BUILDINGS, San Jose	
ENGINEERING MANAGER (SMH)	- For handling
DISTRICT STAFF MANAGER, RECORDS SYSTEMS	- For Archives

Attached, in duplicate for execution, is a lease in favor of the City of Lafayette covering the undeveloped area of our central office site at 3610 Happy Valley Road, Lafayette.

The proposed leased area contains about 22,400 square feet of land as shown cross-hatched on the sketch attached to the lease and will be developed by the City into a public parking lot. Access to the parking lot will be over our existing driveway shown hatched on the sketch.

According to our present long range forecast, this property will not be needed until the year 2005 when a building addition is required to house a new ESS.

LEASE PARTICULARS

Term - 15 years commencing July 1, 1978, through June 30, 1993.

Rent - $3,196 per year. This rental rate is based on a 10% return on our Book Cost for land.

Termination Right - After June 1, 1985, we have a right to terminate any portion of the leased premises required for our building expansion.

Right to Occupy - After June 1, 1985, we have a right, if necessary, to occupy up to 25% (43 parking spaces proposed) of the parking spaces at an annual rental rate of $275 per space. This rate is based on the City's estimated cost to develope and maintain the parking lot.

Services, Facilities and Maintenance - The City will pay for all including the maintenance of our driveway.

Taxes and Assessments - The City will reimburse us for all taxes and assessments attributable to the area leased. Based on last year's taxes, the City's share would be approximately $1,200 per year.

Liability - The City will indemnify and hold us harmless from any and all claims of liability.

Regulatory Controls - The lease is subject to the provisions of General Order 69-B of the State of California, P.U.C.

REMARKS

Prior to construction, the City will prepare plans, acceptable to us, which shall include a fence and gate between the leased property and our existing parking area, all at no cost to us.

Approval of this lease will promote good community relations and provide an income to us without jeopardizing our ability to expand should our forecast change. A further benefit will be realized by saving about $2,400 per year eliminating the cost of maintenance and reimbursement of real property taxes from the City.

Upon execution of this lease, we plan to transfer the area covered by the lease from Account 100.1, "Operating Property" to Account 103, "Miscellaneous Physical Property".

RECOMMENDATION

Please sign both copies of the lease.

HGT 4-11-78

H. G. TURNER
DISTRICT ENGINEER - BUILDINGS

HGT:JP (408-291-4660)

Attachments

cc: R. L. Bargones

RECOMMENDED: R. L. BARGONES 4-19-78
Division Manager, Real Estate Services - Northern California

CONCURRED: W. WOODS 5-1-78
Vice President - Network and Special Services

RECOMMENDED: L. N. HEDBERG MAY 0 5 1978
Vice President - Support Services

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY, a corporation, hereinafter called "Lessor", and CITY OF LAFAYETTE, a municipal corporation, hereinafter called "Lessee", mutually agree as follows:

LEASED PREMISES

1. Lessor hereby leases to Lessee and Lessee hereby hires from Lessor a portion of that certain parcel of land commonly known and designated as 3610 Happy Valley Road located in the City of Lafayette, County of Contra Costa, State of California, containing approximately 22,400 square feet of land as shown cross hatched on Exhibit A attached hereto and hereby made a part hereof.

INGRESS AND EGRESS

2. Throughout Lessee's tenancy of the leased premises, Lessee shall have the nonexclusive right to use only for the purpose of ingress to and egress from the leased premises, Lessor's existing driveway as shown and delineated in hatching on the sketch marked Exhibit A, provided, however, that such use shall not interfere in any way with Lessor's use thereof.

TERM

3. (a) Subject to the provisions of paragraph 16 hereof, the term of this lease is fifteen (15) years commencing on July 1, 1978, and extending to and including June 30, 1993.

(b) At any time after June 1, 1985, and by giving one hundred eighty (180) days' prior written notice, Lessor shall have the right to terminate this lease covering all or any portion of the leased premises which Lessor may require for the expansion of Lessor's existing building located on Lessor's remaining land adjoining the leased premises. If Lessor terminates this lease as to a portion of the leased premises, Lessor shall pay such reasonable costs which may be required to make the leased premises again suitable for parking.

At any time after June 1, 1985, and by giving sixty (60) days' prior written notice, Lessor shall have the right to occupy during the remainder of the term of this lease not more than twenty-five percent (25%) of the parking spaces; provided, however, that the annual rental rate set forth in paragraph 4(a) hereof shall be reduced by two hundred seventy-five dollars ($275.00) for each space so occupied and the percentage factor specified in paragraph 12(a) hereof shall be reduced proportionally.

(c) Unless Lessor gives Lessee thirty (30) days' prior written notice to the contrary, Lessee may continue to occupy the leased premises after the expiration of the term at the same rental rate and upon the same terms and conditions as are contained in this lease. Such tenancy may be terminated by either party hereto at any time upon thirty (30) days' written notice to the other.

RENT

4. (a) Lessee shall pay rent for the leased premises at the rental rate of three thousand one hundred ninety-six dollars ($3,196) per year, annually in advance, subject to proportionate refund of advance-paid rent if this lease should be terminated before the expiration of any year for which rent shall have been paid.

(b) Such rent shall be paid as and when due to The Pacific Telephone and Telegraph Company, at 4 North Second Street, Room 635, San Jose, California 95113, Attention District Engineer - Buildings, or to such other payee or at such other address as Lessor hereafter may designate by written notice to Lessee. Payment of rent to any payee so designated by Lessor shall acquit Lessee from all responsibility therefor or for the proper distribution thereof.

(c) If Lessor should assign this lease or the rents hereunder, or if Lessor should convey the premises leased hereunder, the assignor and assignee or the grantor and grantee, as the case may be, shall give Lessee written notice of such assignment or conveyance. Written instructions for payment of rent thereafter payable hereunder shall also be given by such assignee or grantee.

DEFAULT

5. (a) Should any rent be due and unpaid and if such default shall continue for ten (10) days after written notice from Lessor to Lessee to pay such rent or vacate the premises, Lessor shall have the right in addition to all other rights provided by law, to re-enter the leases premises and remove all persons therefrom.

(b) Except as provided in paragraph 5(a) above, no default on the part of Lessee shall exist unless and until Lessor shall have first served upon Lessee written notice, specifying the nature of such alleged default, and Lessee fails to commence the performance or observance thereof within ten (10) days after receipt of such notice.

USE AND CONSTRUCTION OF PARKING LOT

6. (a) Lessee shall use the leased premises for motor vehicle parking only.

(b) Lessee shall, at its sole cost and expense, have the right to construct on the leased premises a parking lot provided that

(i) Lessee shall, prior to performing any work hereunder, obtain Lessor's prior written approval of Lessee's construction plans for said parking lot,

(ii) all such work shall be done in a lawful manner and in conformity with all applicable laws, ordinances and regulations and Lessee shall pay all fees for permits connected therewith, and

(iii) the leased premises shall be kept free and clear of any and all liens or claims of liens and charges on account of labor and materials used in or contributing to the work performed failing which Lessor shall have the right, but shall not be obligated, to discharge any or all such liens or claims and Lessee shall, upon demand therefor, reimburse Lessor for all costs and expenses so incurred by Lessor.

(c) If Lessee submits the aforesaid construction plans to Lessor for Lessor's approval, such plans shall include, but not be limited, to the following:

(i) a fence and gate acceptable to Lessor be constructed along the easterly property line of the leased premises, and

(ii) adaquate protection, satisfactory to Lessor, shall be provided for the existing gas meter located in the area of the leased premises as shown on Exhibit A.

SERVICES AND FACILITIES

7. Lessee shall furnish all services required by it in the leased premises and shall pay for all utilities used by it on the leased premises.

REPAIR AND MAINTENANCE

8. Lessee shall keep the leased premises in good safe and sanitary condition and repair, which duty shall include but not be limited to the maintenance of the landscaping located thereon and the maintenance and repair of the entire fence located on the leased premises to keep them in reasonable good appearance and condition. Lessee shall make or furnish such facilities and alterations as may be necessary to comply with all applicable federal, state, administrative and county laws, ordinances, orders rules and regulations. Lessee shall also be responsible for the repair and maintenance of Lessor's driveway referred to in paragraph 2 hereof except for such damage caused by Lessor.

DAMAGE OR DESTRUCTION OF PREMISES

9. (a) Should the leased premises be destroyed, or in Lessee's opinion otherwise rendered unsuitable for Lessee's requirements by any casualty, and if in Lessor's or Lessee's opinion the leased premises cannot be made suitable for Lessee's requirements within sixty (60) days following the destruction or casualty, either party hereto may terminate this lease by written notice to the other within thirty (30) days following such destruction or casualty, whereupon all rent, taxes and assessments paid in advance by Lessee covering periods subsequent to the happening of such destruction or casualty shall be promptly refunded.

PEACEABLE AND QUIET POSSESSION

10. Lessor hereby covenants that Lessor has good right to lease the premises for the term of this lease and that Lessee, upon paying the rent and performing and observing the other covenants to be performed and kept by it as provided in this lease, shall have the peaceable and quiet possession of the premises during the term.

LIABILITY FOR DAMAGES

11. Lessee shall indemnify and hold harmless Lessor from any and all claims, demands, causes of action, damages, costs, expenses, losses or liability, in law or in equity, of every kind and nature whatsoever (for, but not limited to, injury to or death of any employee of Lessee or Lessor and damage to or destruction of property of Lessor), arising out of or in any manner directly or indirectly

connected with the leased premises or the use of Lessor's driveway referred to in paragraph 2 hereof howsoever caused, regardless of the negligence of Lessor or its agents or servants, be it active or passive, except the sole active negligence or willful misconduct of Lessor.

TAXES AND ASSESSMENTS

12. (a) Lessor shall pay all real property taxes and assessments including special assessments provided, however, Lessee shall reimburse Lessor upon demand thirty-nine percent (39%) of all real property taxes and assessments including special assessments applicable to land. Such payment by Lessee to Lessor shall be prorated for any fractional part of the first and final tax fiscal year of Lessee's tenancy hereunder.

(b) The purpose of the preceding provisions of this paragraph 12 is to require Lessee to bear that portion of the real property taxes and assessments, including special assessments, in the ratio that the land area of the leased premises, approximately 22,400 square feet, bears to the total land area of approximately 57,001 square feet, on the date hereof. In the event of a material change in the manner or method of determining the assessed valuation of the land or if the real property taxes and assessments including special assessments applicable to the leased premises should be separately assessed to Lessee, then in any such event an equitable adjustment shall be made in the percentage set forth in paragraph (a) hereof, so as to carry out the purpose of this paragraph, as nearly as may be possible, based upon the then existing conditions.

(c) If, during the term of this lease, there is an increase in the area of the land with which the leased premises are assessed for real property tax purposes, Lessor shall pay all real property taxes and assessments, including special assessments, attributable to such increase.

(d) All taxes levied against personal property, trade fixtures and real property improvements owned by and assessed to Lessee shall be paid by Lessee. If such taxes, or any of them, are assessed to Lessor they shall be paid by Lessor, and Lessee shall reimburse Lessor upon demand the full amount so paid by Lessor.

(e) In the event of any dispute under this paragraph, the matter shall be determined by two arbitrators, one selected by Lessor and one selected by Lessee, and in case these two arbitrators cannot agree, they shall select an umpire whose written decision and award, if agreed to by one of the two arbitrators, shall be binding upon Lessor and Lessee, and the obtaining of any such decision and award shall be a condition precedent to the right of Lessor and Lessee to take any action based on such claim. Lessor and Lessee shall bear the expense of the arbitrator so appointed by it and one half (1/2) of the expense of the umpire.

ASSIGNMENT AND SUBLETTING

13. Lessee shall not assign this lease nor sublet the leased premises or any part thereof without the written consent of Lessor except that Lessor hereby consents to Lessee's renting the parking spaces which comprise the leased premises to such persons as Lessee, in its reasonable discretion, selects.

NOTICES OR DEMANDS

14. All notices or demands herein provided to be given or made, or which may be given or made by either party to the other, shall be deemed to have been duly given and made when made in writing and deposited in the United States mail, postage prepaid and addressed as follows:

To Lessee:

City of Lafayette
975 Oakland Street
Lafayette, California 94549

To Lessor:

The Pacific Telephone and Telegraph Company
4 North Second Street
San Jose, California 95113

Attention: District Engineer - Buildings

The address to which notices or demands may be given or made by either party may be changed by written notice given by such party to the other pursuant to this paragraph.

SUCCESSORS AND ASSIGNS

15. This lease shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto.

REGULATORY CONTROLS

16. This lease is subject to all the provisions of General No. 69-B of the Public Utilities Commission of the State of California in like manner as though said provisions were expressly set forth herein.

TIME OF ESSENCE

17. Time is of the essence of this lease.

Dated: August 31, 19 78.

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY

By _____
Vice President

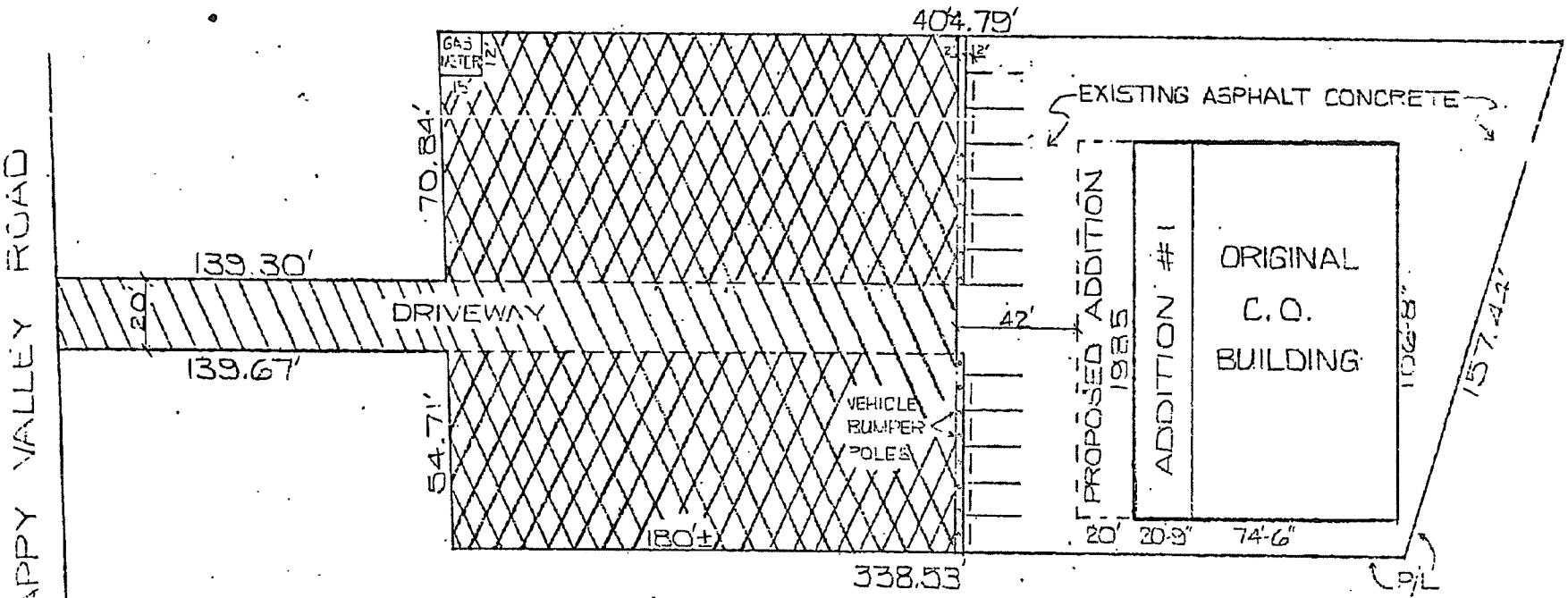
CITY OF LAFAYETTE

By _____
MAYOR

and _____
CITY CLERK

Approved as to form:

_____



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SCALE: 1" = 50'

EXHIBIT "A"

LAFAYETTE CENTRAL OFFICE
3610 HAPPY VALLEY ROAD
PARCEL #W1-041
LAFAYETTE, CALIFORNIA